

# Washington

TRU Solutions LLC

## REPRESENTATIONS, CERTIFICATIONS, AND NOTICES APPLICABLE TO OFFERS OF \$500,000 OR MORE

Seller's authorized signature is required in the space provided at the bottom of this page. The representations and certifications shall apply based on the dollar value of this offer and the specific solicitation provisions and instructions contained in this request for proposal.

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**By signing below, the offeror certifies that the representations and certifications are accurate, current, and complete.**

Signature \_\_\_\_\_  
RFP NO. \_\_\_\_\_  
Date \_\_\_\_\_  
Typed Name \_\_\_\_\_  
Firm Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone (    ) \_\_\_\_\_

**NOTE:** The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

## **I. APPLICABLE TO OFFERS OF \$500,000 OR MORE AND OFFEROR IS A LARGE BUSINESS CONCERN – COST ACCOUNTING STANDARDS**

NOTE: Small Business Concerns are wholly exempt from Cost Accounting Standards

### **1. COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATIONS**

**NOTE:** This note does not apply to small business or foreign governments. This notice is in four parts, identified by Roman Numerals I through IV.

**NOTE:** The applicability of Cost Accounting Standards to commercial items is “non-mandatory”.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

### **2. DISCLOSURE STATEMENT-COST ACCOUNTING PRACTICES AND CERTIFICATION**

- a. Any subcontract in excess of \$650,000 resulting from this solicitation, except subcontracts in which the price negotiated is based on:
  - i. Established catalog or market prices of commercial items sold in substantial quantities to the general public, or
  - ii. Prices set by law or regulation will be subject to the requirements of 48 CFR, Parts 9903 and 9904, except for those subcontracts which are exempt as specified in 48 CFR, Subpart 9903.201-1.
- b. Any offeror submitting a proposal which, if accepted, will result in a subcontract subject to the requirements of 48 CFR, Parts 9903 and 9904 must, as a condition of subcontracting, submit a Disclosure Statement as required by 48 CFR, Subpart 9903.202. The Disclosure statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

**CAUTION:** In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting subcontract performance cost data.

### **3. COST ACCOUNTING STANDARDS-ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE**

If the offeror is eligible to use the modified provisions of 48 CFR, Subpart 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant subcontract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the CAS requirements under the provisions of 48 CFR, Subpart 9903.201-1(b)(2) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Account Practices clause because:

- a. During the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$10 million in awards of CAS-covered prime contracts, and
  - 1) The sum of such awards equaled less than 10 percent of total sales during the cost accounting period.

The offeror further certifies that if such status changes before an award resulting from proposal, the offeror will advise the Contracting Officer immediately.

**CAUTION:** An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$10 million or more or if, during the current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$10 million or more.

4. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated subcontract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ Yes

☐ No

**II. APPLICABLE TO OFFERS OF \$550,000 OR MORE FROM LARGE BUSINESS CONCERNS**

1. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN. (APPLICABLE TO SUBCONTRACTS OVER \$550,000, OR IN THE CASE OF CONSTRUCTION, OR \$1,000,000.)

**NOTE:** This provision does not apply to small business concerns.

- a. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a WTS subcontractor calling for supplies or services required for the performance of the subcontract.
- b. The offeror acknowledges that it is aware of the subcontracting plan requirements in this provision and, if the subcontract offers subcontracting possibilities, agrees to negotiate a plan that includes:
  - 1) Percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization of small business concerns and small business owned and controlled by socially and economically disadvantaged individuals as lower-tier subcontractors, (for the purposes of the subcontracting plan, the offeror may include all purchases that contribute to the performance of the subcontract, including a proportionate share of products, services, etc., whose costs are normally allocated as indirect or overhead costs).
  - 2) As part of its establishment of percentage goals, the apparent successful offeror shall also include in its subcontracting plan:
    - a. A statement of:
      - i. Total dollars planned to be subcontracted,
      - ii. Total dollars planned to be subcontracted to small business, and
      - iii. Total dollars planned to be subcontracted to small disadvantaged business;
    - b. A description of the principal product and service areas to be subcontracted and an identification of those areas where it is planned to use:
      - i. Small business subcontractors, and
      - ii. Small disadvantaged business subcontractors
    - c. A statement of the method used to develop proposed subcontracting goals for
      - i. Small business and
      - ii. Small disadvantaged business concerns (e.g., did the offering organization consider company source lists, the small business disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, the Office of Minority Business Data Center in the Department of Commerce, and the facilities of local small business and minority associations?) and

- iii. If the offering organization includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred with
  - 1. Small business and
  - 2. Small disadvantaged business subcontractors shall be explained.
- d. The name of an individual within the employ of the offering organization who will administer the subcontracting program of the offeror and a description of the duties of such an individual.
- e. A description of the efforts the offering organization will take to assure that small business and small business concerns owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to compete for lower-tier subcontracts.
- f. Assurance that the offeror will include the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" in all lower-tier subcontracts that offer further subcontracting opportunities, and will require all lower-tier subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000, or in the case of a subcontract for the construction of any public facility, \$1,000,000 to adopt and comply with a plan similar to the plan agreed to by the offering organization. Such assurance shall describe the offering organization's procedures for the review, approval, and monitoring of compliance with such plans.
- g. Assurance that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the Department of Energy and the Small Business Administration in order to determine the extent of compliance by the offering organization with the subcontracting plan.
- h. A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award lower-tier subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide basis unless otherwise indicated):
  - i. Small and disadvantaged business source lists, guides and other data identifying small and small disadvantaged business vendors;
  - ii. Organizations contacted for small disadvantaged business sources;
  - iii. On a contract-by-contract basis, records on all lower-tier subcontract solicitations over \$100,000 indicating on each solicitation
    - 1. whether small business was solicited, and if not, why not,
    - 2. Whether small disadvantaged business was solicited, and if not, why not,
    - 3. Reasons for the failure of solicited small business or small disadvantaged business to receive the subcontract award,
    - 4. Records to support other outreach efforts, such as:
      - a. Contacts with minority and small business trade associations
      - b. Contacts with business development organizations and,
      - c. Attendance at small and minority business procurement conferences and trade fairs
    - 5. Records to support internal activities to guide and encourage buyers such as:
      - a. Workshops, seminars, training programs, etc., and
      - b. Monitoring activities to evaluate compliance; and

6. On a Contract-by-contract basis, records to support award data submitted to the contractor including names and addresses of lower-tier subcontractors.

3) The offeror understands that:

- a. No subcontract will be awarded unless and until an acceptable plan is negotiated with the contractor and such plan will be incorporated into the subcontract as a material part thereof.
- b. An acceptable plan much, in the determination of the contractor, provide the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged persons to participate in the performance of the subcontract.
- c. If a subcontracting plan acceptable to the contractor is not negotiated within the time limits prescribed by the contractor, and such failure arises out of causes within the control and by the fault or negligence of the offering organization, the offering organization shall be ineligible for an award. The contractor shall notify the subcontractor in writing of the reasons for determining a subcontracting plan to be unacceptable. Such notice shall be given early enough in the negotiation process to allow the subcontractor to modify the plan within the time limits prescribed.
- d. Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the contractor in determining the responsibility of the offering organization for award of the subcontract.
- e. It is the offeror's responsibility to develop a satisfactory subcontracting plan with respect to both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals, and each such aspect of the offering organization's plan will be judged independently of the other.
- f. The offeror will submit as required by the contractor periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan on Standard Form 294, Subcontracting Report on Individual Contracts or Standard Form 295, Summary Subcontract Report. Lower-tier subcontractors will also submit these reports to the contractor, or as otherwise directed, with a copy to the subcontractor's designated small and disadvantaged business liaison.

4) The failure of the subcontractor or lower-tier subcontractor to comply in good faith with:

- a. The clause Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged individuals or;
- b. An approved plan required by this Small Business Concerns and Small Disadvantaged Business Subcontracting Plan provision, will be a breach of such subcontract.

5) Commercial Product

If a commercial product is offered, the required subcontracting plan may relate to the company's production generally (both for commercial and noncommercial products), rather than solely to the item being procured under the subcontract. In such cases, the subcontractor shall be required to submit one company-wide, annual plan to be reviewed for approval by the first agency with which it enters into a subcontract (which requires a subcontracting plan) during the fiscal year, or by another agency satisfactory to the contractor. The approved plan will remain in effect for the company's entire fiscal year for all of the company's or the division's commercial products. The term "commercial products" means products in regular production, sold in substantial quantities to the general public and/or industry at established market or catalog prices. A product that, in the opinion of the contractor, differs only insignificantly from the subcontractor's commercial product may be regarded for the purposes of this clause as a commercial product.

### III. APPLICABLE TO OFFERS OF \$5,000,000 OR MORE AND PERFORMANCE MORE THAN 120 DAYS

#### CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

*Definitions.* As used in this section—

“Agent” means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

“Full cooperation”—

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors’ and investigators’ request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

“United States,” means the 50 States, the District of Columbia, and outlying areas.

The offeror represents that:

☐ It has a written code of business ethics and conduct and a copy of the code is available to each employee engaged in performance of the subcontract. The code is in compliance with the requirements of FAR 52.203-13 *Contractor Code of Business Ethics and Conduct* and 52.203-14 *Display of Hotline Posters*.

☐ It does not currently have a code of business ethics and conduct and shall:

(1) Within 30 days after subcontract award, unless a longer time period is established in the subcontract:

(i) Have a written code of business ethics and conduct that meets the requirements of FAR 52.203-13 *Contractor Code of Business Ethics and Conduct* and 52.203-14 *Display of Hotline Posters*; and

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

The offeror represents that it shall:

1. Exercise due diligence to prevent and detect criminal conduct; and

2. Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.
3. The Offeror shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to WTS, whenever, in connection with the award, performance, or closeout of this subcontract, the Offeror has credible evidence that a principal, employee, agent, or subcontractor of the Offeror has committed—

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

The offeror represents that paragraph (c) of FAR 52.203-13 *Contractor Code of Business Ethics and Conduct*:

☐ Does apply as Offeror is not a small business concern

☐ Does not apply as Offeror is a small business concern

WTS and the Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the subcontractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by WTS or the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the subcontractor. WTS or the Government may transfer documents provided by the subcontractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

If the violation relates to an order against a Government wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the subcontractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

#### **IV. APPLICABLE TO OFFERS OF \$10,000,000 OR MORE**

##### **1. EQUAL OPPORTUNITY COMPLIANCE**

The offeror represents that:

- a) A full compliance review of the offeror's employment practices has ☐, has not ☐, been conducted by an agency of the Federal Government.
- b) If a full compliance review has been conducted by an agency of the Federal Government, the most recent compliance review was conducted on \_\_\_\_\_ (Date) by \_\_\_\_\_ (Federal Agency).
- c) The proposed lower-tier subcontractors that will be awarded subcontracts of \$1,000,000 or more are:

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Whether the offering organization and its lower-tier subcontracts are able to comply with the provisions of the Equal Opportunity clause.